

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kenneth R. Owens, et al.
Serial No.: 09/692,885
Filing Date: October 20, 2000
Examiner: Warner Wong
Group Art Unit: 2616
Confirmation No.: 6112
Title: METHOD AND APPARATUS FOR DETECTING
MPLS NETWORK FAILURES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed May 11, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

In the Advisory Action of May 11, 2006 and the Final Action of February 16, 2006, the Examiner indicates that the Lamport, et al. patent inhibits generation of a keep-alive status message at a first switch destined for a second switch upon not receiving an acknowledgment from the second switch. However, the claimed invention requires a capability to inhibit generation of a switch status message at a first switch destined for a third switch when the first switch does not receive a switch status message from a second switch. Thus, the Lamport, et al. patent fails to disclose this capability upon which the Examiner relies in support of the rejection of the claims.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of February 16, 2006 to establish a prima facie case of obviousness of the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Lamport, et al. patent can be combined in any manner with the Hsing, et al. patent or any of the other patents cited by the Examiner. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Lamport, et al. patent with the Hsing, et al.

patent and the other cited patents without providing any objective reasoning or citing any evidence of record to support such a position. The Examiner has not provided any reasons how the proposed combination of the Lamport, et al. patent, the Hsing, et al. patent, and the other cited patents would have any expectation of success let alone a reasonable expectation of success.

As for teaching the claimed invention, Independent Claims 1 and 11 recite in general the ability to inhibit generation of a switch status message at a first data switch destined for a third data switch upon not receiving a switch status message from a second data switch in order to initiate redirection of subsequent data messages over an alternate data path through said data network. By contrast, neither the Lamport, et al. patent nor the Hsing, et al. patent inhibit generation of a switch status message let alone inhibit its generation to a separate third switch in the network as provided in the claimed invention. The portions of the Lamport, et al. patent cited by the Examiner fail to disclose any generation of a switch status message by a first data switch destined for a third data switch in an implementation where a first data message is sent from the first data switch to a second switch. The Lamport, et al. and Hsing, et al. patents are directed to the interaction between two network members and not any interaction of three data switches as provided in the claimed invention. Keep alive messages and acknowledgment messages are sent between the same two nodes in the Lamport, et al. patent. There is no discussion in the Lamport, et al. patent concerning messages going to a third network node let alone an ability to inhibit those messages. Similarly, the Hsing, et al. patent uses a polling and response technique between two nodes to detect a fault in the link between the two nodes. Thus, the Hsing, et al. patent does not inhibit generation of

a switch status message to a separate third node in the data path as required by the claimed invention.

Moreover, neither the Lamport, et al. nor Hsing, et al. patents use this inhibit capability to trigger a redirection of data messages onto an alternate path as provided by the claimed invention. The Examiner cites the alternative path determination of the Hsing, et al. path to support the rejections to the claims. However, there is no disclosure in the cited portion of the Hsing, et al. patent that the determination of the alternate path is initiated as a result of inhibiting generation of a switch status method let alone in relation to a third of three data switches within a data network as provided by the claimed invention.

Independent Claims 22 and 23 recite in general the ability to send a switch status message to a first data switch in response to not receiving a first data message from the first data switch, where the switch status message initiates redirection of subsequent data messages over an alternate data path through a data network. The Examiner readily admits that the Lamport, et al. and Olson patents lack any disclosure related to this feature. The Examiner uses the Hsing, et al. patent to support the disclosure of this feature. However, the Hsing, et al. patent merely discloses sending a re-route release message for releasing bandwidth for a call from a first switch to downstream switches in response to detecting a link fault by the first switch. The Hsing, et al. patent uses a polling/response mechanism and does not provide any response as a result of lack of receipt of data on the data path as provided in the claimed invention. The Hsing, et al. patent has no switch status message used to initiate redirection of subsequent data messages over an alternate data path as required in the claimed invention.

CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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